



AMERICAN SUBCONTRACTORS ASSOCIATION

November 14, 2016

The Honorable Rick Snyder
P.O. Box 30013
Lansing, Michigan 48909

Dear Governor Snyder:

The American Subcontractors Association, Inc. (ASA) strongly urges you to support including in SB627, a provision that would require payment and performance bonds for the construction components of infrastructure projects financed through public-private partnerships (P3s).

ASA is a national trade association representing subcontractors, specialty trade contractors and suppliers in the construction industry. ASA members work in virtually all of the construction trades and on virtually every type of horizontal and vertical construction. ASA members frequently contract directly with construction owners, including various government entities. More often, they serve as subcontractors dealing with construction owners through a prime contractor. The great majority of ASA members are small businesses.

Increasingly, Michigan and other states are funding construction projects for public use through public-private partnerships. Typically, the public entity will provide the land and authorize the private entity to design, build and frequently operate and maintain the resulting public work. In trying to maximize the incentives for the participation of private investment in P3 projects, state and local governments try to minimize government "red tape." The zeal to reduce "red tape" has damaging consequences, however, when it eliminates or omits deeply justified requirements related to public procurement, such as the statutory payment protections for work performed by subcontractors and suppliers.

Michigan law requires the prime contractor to furnish surety bonds on a public construction project to assure that the project will be completed, protecting precious taxpayer dollars, and that subcontractors and suppliers, many of which are small businesses, will be paid. Other types of financial instruments (i.e., letters of credit, parental guarantees, committed equity, etc.) do not provide the same direct right of action for subcontractors and suppliers. Deprived of the clear payment protections provided by payment bonds, a subcontractor or supplier working on a P3 project is

AMERICAN SUBCONTRACTORS ASSOCIATION, INC.

1004 Duke Street, Alexandria, VA 22314-3588

Phone: (703) 684-3450 Fax: (703) 836-3482

E-mail: CNelson@asa-hq.com Web: www.asaonline.com

November 14, 2016

Page Two

unlikely to have any payment protections at all. Lien laws, which secure subcontractor payment interests on private construction, will not apply to P3s, because the construction being financed by the P3 is for public use, if not ultimately public property.

Lack of payment assurances shifts very substantial risks to subcontractors and suppliers working on a P3 project. Typically, subcontractors extend large amounts of credit before submitting an invoice to the project's prime contractor. They will have paid their workers and suppliers. They may even have paid estimated taxes before payment is forthcoming for work properly performed. Taxpayers ultimately bear the costs of increased risk of nonpayment to construction subcontractors and suppliers. Prudent subcontractors and suppliers will naturally price risk into, or choose not to participate in P3 projects.

In summary, SB627 should be amended to provide payment assurances to construction subcontractors and suppliers on certain infrastructure projects financed through public-private partnerships in the same manner as other public projects in the state for the benefit of the State of Michigan and its citizens.

Respectfully submitted,

/s/ E. Colette Nelson

E. Colette Nelson
Chief Advocacy Officer

AMERICAN SUBCONTRACTORS ASSOCIATION, INC.

1004 Duke Street, Alexandria, VA 22314-3588

Phone: (703) 684-3450 Fax: (703) 836-3482

E-mail: CNelson@asa-hq.com Web: www.asaonline.com